SUPREME COURT U.S.
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No. 02-277

In the Supreme Court of the United States

JAMES K. HAVEMAN, JR., DIRECTOR, MICHIGAN DEPARTMENT OF COMMUNITY HEALTH, PETITIONER

v.

WESTSIDE MOTHERS, A MICHIGAN WELFARE RIGHTS ORGANIZATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

The United States's participation in the court of appeals was addressed to the following question:

Whether federal legislation enacted pursuant to the Spending Clause is the "supreme Law of the Land" (U.S. Const. Art. VI, Cl. 2), and thus may be enforced in federal court against state officials seeking prospective injunctive relief.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 289 F.3d 852. The order of the district court dismissing the organizational respondents for lack of standing (Pet. App. 98a-111a) is unreported. The order of the district court dismissing all remaining claims (Pet. App. 21a-97a) is reported at 133 F. Supp. 2d 549.

JURISDICTION

The judgment of the court of appeals was entered on May 15, 2002. The petition for a writ of certiorari was filed on August 13, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Medicaid program, enacted in 1965 as Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.*, is a cooperative federal-state public assistance program that provides federal financial assistance to States that elect to pay for medical services on behalf of certain individuals. See *Harris* v. *McRae*, 448 U.S. 297, 301 (1980). Federal financial participation is calculated according to a statutory formula that pays, at a minimum, 50% of a State's costs. 42 U.S.C. 1396b(a)(1), 1396d(b). Although participation in the Medicaid program is optional, once a State elects to participate, it must comply with the requirements of the Medicaid statute. See *Harris*, 448 U.S. at 301. All fifty States have elected to participate in the federal Medicaid program, including Michigan.

In 1999, respondents, who are individuals and advocacy and professional-services organizations, filed this class action under 42 U.S.C. 1983 against state officials involved in operating Michigan's Medicaid program. The complaint alleged, *inter alia*, that the state officials failed to provide the early and periodic screening, diagnosis, and treatment services mandated by the Medicaid statute (42 U.S.C. 1396d(a)(4)(B) and (r)) to the class of all Michigan children eligible for those services. See Pet. App. 145a-176a. Respondents sought declaratory and injunctive relief, as well as fees and costs. *Id.* at 148a, 175a.

2. The state officials moved to dismiss the action or, in the alternative, for summary judgment. Pet. App. 23a. In 1999, the district court dismissed two organizations for lack of constitutional standing, and two organizations for lack of prudential standing. *Id.* at 98a-

111a. In 2001, the district court dismissed the complaint in its entirety. *Id.* at 21a-97a.

The district court recognized that, under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), a private party alleging a violation of federal law may sue a state official for prospective injunctive relief. Pet. App. 39a. But the district court held that "the *Ex parte Young* doctrine * * * does not apply to congressional enactments under the Spending Power," *id.* at 40a, reasoning that such enactments do not qualify as "the supreme Law of the Land" under the Supremacy Clause (U.S. Const. Art. VI, Cl. 2). Pet. App. 44a.

The district court explained that legislation enacted pursuant to Congress's spending power is "in the nature of a contract." Pet. App. 34a (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981) (*Pennhurst I*)). According to the court, the contingent nature of the obligations imposed under federal laws enacted pursuant to the Spending Clause (U.S. Const. Art. I, § 8) precludes such enactments from being regarded as the "supreme Law of the Land" within the Supremacy Clause. See Pet. App. 33a-35a, 41a-44a.

The district court recognized "that *Ex parte Young* suits have been brought repeatedly over at least the past thirty years against state officers for alleged noncompliance with federal-state programs enacted pursuant to the Spending Power." Pet. App. 45a. But the court nonetheless concluded that *Ex parte Young* does not allow the suit against the state officers here "so long as they are acting within the lawful authority delegated to them by the State," Pet. App. 66a; that *Ex parte Young* does not extend to the discretionary functions performed by these state officials, *id.* at 66a-67a; and that under *Seminole Tribe* v. *Florida*, 517 U.S. 44, 72-73 (1996), *Ex parte Young* relief is not available

where, as here, Medicaid prescribes a limited form of liability for state non-compliance. Pet. App. 44a-69a.

Finally, the district court concluded that, even if this action were proper under *Ex parte Young*, dismissal would still be required on the ground that Section 1983 did not authorize this action. The court explained that because, in its view, the conditions of federal spending programs such as the Medicaid program are not secured by federal law within the meaning of 42 U.S.C. 1983, Section 1983 does not create a private cause of action to enforce those conditions. Pet. App. 69a-83a.

3. The court of appeals reversed. Pet. App. 1a-20a.[1] The court "reaffirm[ed] well-established precedent holding that laws validly passed by Congress under its spending powers are supreme law of the land," and thus held that "the conditions imposed by the federal government pursuant to statute upon states participating in Medicaid and similar programs are not merely contract provisions; they are federal laws." *Id.* at 9a, 12a.

In so holding, the court recognized that *Pennhurst I* describes the federal Medicaid program "metaphorically" as "in the nature of a contract." Pet. App. 9a. But, the court continued, *Pennhurst I* "does not say that Medicaid is *only* a contract," nor does it "limit the remedies to common law contract remedies or suggest[] that normal federal question doctrines do not apply" with respect to the Medicaid program. *Ibid.* Moreover, the court of appeals noted that, in *Bennett* v. *Kentucky Department of Education*, 470 U.S. 656, 669 (1985), this

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[1] The United States participated in the court of appeals as amicus curiae supporting reversal of the district court's decision. The government's amicus brief was addressed to the question presented above (see p. I, *supra*). The court of appeals *sua sponte* treated the United States as an intervenor.

Court expressly held that the conditions imposed by the federal government pursuant to the Medicaid statute on States participating in Medicaid and other federal grant programs are laws rather than mere contract provisions. Pet. App. 9a.

The court of appeals further held that this action "fits squarely within *Ex parte Young*," explaining that "[respondents] allege an ongoing violation of federal law, the Medicaid Act, and seek prospective equitable relief, an injunction ordering the named state officials henceforth to comply with the law." Pet. App. 14a. The court also found that the underlying suit did not seek to compel discretionary action by state officials; that respondents sufficiently alleged personal, unlawful behavior attributed to petitioners; and that this Court's decision in *Seminole Tribe* does not prescribe suit under a detailed remedial scheme sufficient to establish Congress's intent to preempt an *Ex parte Young* action to enforce the particular federal law at issue. *Id.* at 15a-16a.

The court of appeals concluded that respondents "have a cause of action under § 1983 for alleged noncompliance with the screening and treatment provisions of the Medicaid Act." Pet. App. 18a. The court explained that the Medicaid provisions at issue were intended to benefit the putative plaintiffs, children who are eligible for screening and treatment services; the provisions are couched in "mandatory" terms; the provisions "carefully detail the specific services to be provided"; and Congress did not expressly foreclose recourse to Section 1983 or supplant Section 1983 by

enacting an alternative remedial scheme. *Id.* at 17a-18a.[2]

ARGUMENT

Petitioners argue that legislation enacted pursuant to the Spending Clause, such as Medicaid, is not the "supreme Law of the Land" within the meaning of the Supremacy Clause. Pet. 5, 7-8. In addition, according to petitioners, a State's relationship with the federal government under Spending Clause programs like Medicaid is, instead, a contractual arrangement that cannot be enforced through the doctrine of *Ex parte Young*. Pet. 9-11. The court of appeals properly rejected those arguments.

1. This Court's precedent establishes that Spending Clause enactments preempt inconsistent state law by operation of the Supremacy Clause. For instance, in *Townsend* v. *Swank*, 404 U.S. 282, 285 (1971), this Court held that an Illinois law imposing certain conditions on the receipt of federal benefits under the Aid to Families with Dependent Children program, challenged through the vehicle of an *Ex parte Young* action, was inconsistent with the Social Security Act and therefore "invalid under the Supremacy Clause."[3]

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[2] The court of appeals also addressed the district court's order dismissing certain organizations for lack of standing. The court of appeals affirmed the dismissal of the Welfare Rights Organization for lack of constitutional standing, but held that the two professional organizations (Michigan chapters of the American Academy of Pediatrics and of the American Academy of Pediatric Dentists) met the requirements for prudential and associational standing. Pet. App. 18a-20a.

[3] Petitioners point (Pet. 8) to a statement in Chief Justice Burger's concurring opinion in *Swank*, but that statement was not adopted by the majority of this Court in *Swank* and is out of step

Likewise, in *Bennett* v. *Arkansas*, 485 U.S. 395, 397 (1988) (per curiam), this Court held that an Arkansas statute allowing the State to attach Social Security benefits conflicted with the Social Security Act and was therefore preempted by operation of the Supremacy Clause.

That understanding has been reaffirmed by this Court repeatedly and recently. See, *e.g.*, *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413, 417 (1973) ("[B]y reason of the Supremacy Clause" funds derived from Social Security disability benefits are immune from state debt-collection processes even though in private hands.); *Blum* v. *Bacon*, 457 U.S. 132, 138 (1982) (state rules that conflict with regulations promulgated pursuant to the Social Security Act "are invalid under the Supremacy Clause"); *Lawrence County* v. *Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 257-258 (1985) (state statute imposing restrictions on the way local governments may spend funds received from the federal government under the Payment in Lieu of Taxes Act "is invalid under the Supremacy Clause"); *Dalton* v. *Little Rock Family Planning Servs.*, 516 U.S. 474, 476 (1996) (per curiam) ("[i]n a pre-emption case such as this, state law is displaced" as inconsistent with the Medicaid statute "only to the extent that it actually conflicts with federal law") (internal quotation marks omitted); *Norfolk S. Ry.* v. *Shanklin*, 529 U.S. 344, 359 (2000) ("[o]nce the [Federal Highway Administration] approved the project and the [railway crossing] signs were installed using federal funds, the federal standard for adequacy displaced Tennessee

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with the decisions of this Court discussed in the text above, including *Swank* itself.

statutory and common law addressing the same subject, thereby pre-empting respondent's [tort] claim").

It is also established that Spending Clause legislation may be enforced in a proper action under 42 U.S.C. 1983, which "provides a federal remedy for 'the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.'" *Golden State Transit Corp.* v. *City of Los Angeles*, 493 U.S. 103, 105 (1989) (quoting 42 U.S.C. 1983). As this Court has explained, the language of Section 1983 "plainly indicates" that "the remedy encompasses violations of federal statutory as well as constitutional rights." *Ibid.* See *Gonzaga Univ.* v. *Doe*, 122 S. Ct. 2268, 2273-2274 (2002).

To determine whether a plaintiff has alleged the deprivation of rights secured by federal law under Section 1983, the Court applies a multi-factor test. See *Gonzaga Univ.*, 122 S. Ct. at 2275; *Blessing* v. *Freestone*, 520 U.S. 329, 340-341 (1997); Pet. App. 17a-18a. The Court's decision last Term in *Gonzaga* underscores that this framework does not exclude the enforcement under Section 1983 of statutory rights stemming from Spending Clause enactments. Although the Court concluded that the Spending Clause legislation at issue in *Gonzaga* did not create enforceable rights under Section 1983, it never suggested that statutory rights meeting the *Blessing* criteria are not enforceable simply because they are rooted in Congress's spending power.

To be sure, this Court has characterized Spending Clause legislation as "much in the nature of a contract." *Pennhurst I*, 451 U.S. at 17; see, *e.g.*, *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). But as the Court emphasized last Term, even though the Court has found that contract analogy useful in construing Spending Clause legislation for certain pur-

poses, the Court's use of the analogy does "not imply * * * that suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise." *Barnes* v. *Gorman*, 122 S. Ct. 2097, 2102 n.2 (2002). The court of appeals in this case properly held that the contract analogy did not preclude this enforcement action.

2. The decision below does not conflict with any decision of any other court of appeals. See Pet. App. 12a ("We have found no decision by any other federal circuit court of appeals to the contrary."). Indeed, the other appellate courts that have addressed the issue have uniformly held that the Medicaid Act and other Spending Clause enactments are the "supreme Law of the Land" and enforceable against state officials under Section 1983 and the doctrine of *Ex parte Young*. See *Antrican* v. *Odom*, 290 F.3d 178, 188 (4th Cir. 2002); *Frazar* v. *Gilbert*, 300 F.3d 530, 550-551 (5th Cir. 2002); *Missouri Child Care Ass'n* v. *Cross*, 294 F.3d 1034, 1040-1441 (8th Cir. 2002).

In *Antrican*, the Fourth Circuit rejected the "novel position" advanced by petitioners here as "at odds with existing, binding precedent" of this Court treating the Medicaid Act as "supreme" Law and invalidating conflicting state Law under the Supremacy Clause. 290 F.3d at 188 (citing *Dalton* v. *Little Rock Family Planning Servs.*, 516 U.S. at 478).

Petitioners point to a district court decision holding that Medicaid does not provide a cause of action for nursing home residents to sue the owners and operators of nursing homes for failure to provide care of the standard mandated by the Medicaid statute. Pet. 8 (citing *Brogdon ex rel. Cline* v. *National Healthcare Corp.*, 103 F. Supp. 2d 1322, 1339 (N.D. Ga. 2000)). But that lone district court decision provides no reason for

granting certiorari in this case, particularly against the backdrop of the uniform position taken by the courts of appeals on the question presented.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4] In any event, the discussion in *Brogdon* on which petitioners rely is dictum. It appears in the district court's decision on reconsideration, which rejected the nursing home owners' argument that the plaintiffs' additional state law claims for professional malpractice, third-party beneficiary breach of contract, and breach of contract are preempted by federal law. The district court held the preemption argument was plainly available previously, and therefore did not provide a proper ground for relief in a motion for reconsideration. 103 F. Supp. 2d at 1339. The district court went on to state that the authority to require state compliance with Medicaid standards derives from contract rather than the Supremacy Clause, but that discussion was not necessary to its decision. Moreover, in opining on that issue, the district court did not acknowledge the vast body of contrary precedent discussed above.